27th Congress, 2d Session. Rep. No. 877. Ho. of Reps.

NOAH BROWN, ET AL.—ARMED BRIG WARRIOR.

[To accompany bill H. R. No. 501.]

June 15, 1842.

Mr. J. R. Ingersoll, from the Committee of Ways and Means, submitted the following

REPORT:

The Committee of Ways and Means, to whom was referred the memorial of Noah Brown and the heirs and representatives of Adam Brown, deceased, in behalf of themselves and others, the owners, officers, and crew of the American private armed brig Warrior, respectfully report:

It appears from the petition that the brig Warrior was, during the late war between the United States and Great Britain, commissioned as an American cruiser, and placed under the command of Capt. Guy R. Champlin; that, on the 13th day of March, 1815, she captured, in latitude 15 deg. south and longitude 59 deg. west from the meridian of Greenwich, a British brig or vessel called the Dundee, laden with a valuable cargo, navigated by British subjects, sailing under the British flag, and documented by British papers; that the time of the capture, not being within the limitations or provisions of the treaty of peace between the United States and Great Britain, signed at Ghent the 24th day of December, 1814, the brig and cargo became a lawful prize to the captors. The brig Dundee, with her cargo, was brought into the port of New York for adjudication; a libel was filed in the district court of the United States for the southern district of New York, in behalf of the owners, officers, and crew of the brig Warrior, against the brig Dundee, and another libel against her cargo, consisting of packages, bales, and cases of merchandise. The district court ordered the brig Dundee and her cargo to be sold. A sale took place in pursuance of such order, and the proceeds of sales were paid into court by the marshal of the district on or about the 17th day of July, 1815. By a decree of the court, the brig Dundee and part of her cargo were condemned, but, claims having been interposed for other parts of said cargo, those claims were reserved for further adjudication. The proceeds of the sales of the brig and of the portion of the cargo thus first condemned were at different times paid to the petitioners. The proceeds of that portion of the cargo which was claimed, and which were retained in court, amounted to $16,460 32. Time was allowed to the claimants of the uncondemned parts of the cargo to substantiate their claims by further proof until the 26th June, 1817. The petitioners have produced the affidavit of Abraham M. Valentine, who, during the years 1814 and 1815, was clerk to Adam and Noah Brown, and declares him-

self to be "acquainted with all the circumstances in relation to the cargo of the brig Dundee." In this affidavit it is stated that, after the money had been deposited in court, Adam and Noah Brown, as agents and owners, offered to indemnify the court if the money deposited should be paid to them, and to secure its return in case the claim could be substantiated. This offer was refused by the court, who declined to interfere in the premises. The affidavit adds "that the security offered was a mortgage on the estate of Adam and Noah Brown, to which was to be added the guarantee of Henry Rutgers, and, as the deponent believes, the name of Henry Eckford;" and "he has every reason to believe, and does believe, that the securities above named were offered to said court, duly executed and acknowledged, when the same were refused." The claimants having failed to produce any proofs, their claims were disallowed, and a final decree of condemnation was made, which still remains in force unreversed and unsatisfied. The captors then learned that the court was not possessed of the fund, but that the same had been embezzled by the clerk.

The duties upon the portion of the cargo last condemned (the proceeds of which were thus embezzled by the clerk of the court) were secured and paid by Adam and Noah Brown into the custom-house to the amount of $6,953 64. This sum has not, in part or in whole, been refunded, nor have the captors derived any benefit or equivalent whatever for the payment thus made by them.

The memorialists add that, in the year 1827, a large sum of money, amounting to $7,511 96, was paid into the Treasury of the United States on account of the moneys embezzled by the clerk of the court, but that neither from this, nor from any other source, has any thing been received by them.

1st. Is the Government responsible for the loss occasioned by the default of the clerk of the court?

2d. Should the duties, or any part of them, be restored?

3d. Are the petitioners entitled to a proportion of the money received by the United States from the defaulting officer?

The committee feel constrained to answer the first two questions in the negative. They know of no principle which would render the Government, in any of its departments, an insurer of the solvency or integrity of its officers. They are equally ignorant of any principle that would give to individual creditors a preference over the Government in claiming reimbursement out of the funds derived from a person indebted to them both. If greater precautions had been taken by the court, the money might still have been lost. A deposite in a bank, under the eye and in the name of the court, might not have saved it. Yet it will not be pretended that, if a bank under such circumstances had failed, the Government would have been responsible. In cases of notorious insolvency, the United States are entitled to priority of payment over all other creditors of the insolvent estate. This priority is not destroyed if the insolvency should chance to be a fraudulent one; nor is it affected by the circumstance that the debtor is an officer of the Government. A class of cases exists where responsibility has been held to attach to the Government in consequence of the acts of its civil as well as military functionaries. When, for instance, under the immediate orders of the head of a department, a subordinate officer takes possession of property supposed to be

liable to claims of the Government, and, the fact turning out to be otherwise, responsibility attaches to the officer, he has been indemnified. Those cases are not precedents for the present claim. The parties litigant had a right to reasonable time and opportunity for the production of their proofs. During the interval of delay, the fund remained in deposite with the acknowledged officer. Had it been paid to the libellants, the guarantee offered by them might, in the course of things, have proved insufficient, and loss, on that account, might have been the consequence; yet, in such case, the claimants, obtaining a favorable decree, could not justly have asked remuneration from the Government. The same rule that would have denied an appeal for redress in the one case equally furnishes an answer to it in the other.

But the committee are disposed to believe that, in receiving the whole of the money which was found in the name or possession of the defaulting officer, the Government agents acted virtually in behalf of all parties concerned in it. They had extraordinary means of pursuit and recovery. It was a common fund when received. Its character underwent no substantial alteration when it was taken into the Treasury. The United States became, as it were, trustees for all persons equitably interested in the fund, and are subject to the equitable claims of the joint owners.

The amount of defalcation appears to have been $133,673; the sum rescued from the officer was $7,511; and the amount lost by the petitioners $16,460. Giving them a just proportion of the redeemed fund, they would receive $939 83. And the committee accordingly report a bill providing for the payment to them of that amount.